IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3387 OF 1998

Dilip Ramniklal Mehta ...Plaintiff

Versus

M/s.Cepham Organics Ltd & Ors. ...Defendants

Shri Girish Desai i/by Dadhich & Company for the Plaintiff.

CORAM : ABHAY S.OKA, J.
DATED : JULY 26, 2007.

ORAL JUDGMENT:

1. The suit is kept under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiff has tendered an affidavit of evidence of Shri Narendra Shantilal Thakkar, Constituted Attorney of the Plaintiff.

2. According to the case of the Plaintiff on the persuasion of the second Defendant who was claiming to be the Managing Director of the first Defendant, the Plaintiff applied for allotment of 2 lakhs equity shares of Rs.10/- each at the premium of Rs.10/- per share in the public issue of the third Defendant. According to the case of the Plaintiffs, the second Defendant is also a Managing Director of the third Defendant. The Plaintiff paid a sum of Rs.40,00,000/- for allotment of the shares.

3. According to the case of the Plaintiff by an

agreement dated 11th January, 1995 the first Defendant Company through the 2nd Defendant agreed to purchase from the Plaintiff the said 2 lakh shares of the third Defendant-Company at the rate of Rs.51/- per share and gave the Plaintiff a post dated cheque dated 11th July, 1998 in the sum of Rs.01,02,00,000/- for purchase of the said shares. Allotment of the two lakh shares of the third Defendant was made in favour of the Plaintiff. However, the cheque in the sum of Rs.01,02,000,00/- was dishonoured on the ground that the account was closed. Thereafter, a notice of demand was issued by the Plaintiffs to the first and second Defendants calling upon them to pay the amount.

4. The Plaintiffs have filed an affidavit of its constituted attorney. Xerox copies of the relevant documents including the agreement dated 11th January, 1995 as well as the Cheque dated 11th July, 1995 are placed on record alongwith the affidavit of evidence.

5. According to the case of the Plaintiff, Agreement dated 11th January, 1995 was executed by the first Defendant-Company through the second Defendant and by the said Agreement the first Defendant through the second Defendant agreed to purchase 2 lakh shares of the third Defendant Company from the Plaintiff at the price of Rs.51/- per share. Perusal of the Agreement dated 11th January, 1995 shows that it is in the form of a

letter addressed and signed by the second Defendant to the Plaintiff. In the said letter it is stated by the second Defendant that as the Managing Director of the third Defendant Company he was assuring the Plaintiff that full allotment of 2 lakh shares of the third Defendant will be made in favour of the Plaintiff. The said Agreement is executed by the second Defendant. Though in the Agreement there is nothing to show that it was executed on behalf of the first Defendant-Company, in accordance with the said Agreement, a cheque in the sum of Rs.1 crore 2 lakhs was issued by the first Defendant Company drawn on Dena Bank. The said cheque has been dishonoured. This fact is duly established by the aforesaid affidavit. The claim in the suit is also based on dishonour of the said cheque. The fact of execution of Agreement dated 11th January, 1995 is not denied by the second Defendant. The first Defendant has not denied that in terms of the said Agreement, a cheque in the sum of Rs.1 crore 2 lakhs was issued in favour of the Plaintiff. Therefore, the liability of the first and second Defendants to pay a sum of Rs.1 crores two lacs to the Plaintiff is established.

6. The case of the Plaintiff is that the Plaintiff purchased two lakh shares of the third Defendant Company by paying sum of Rs.40 lakhs. The said fact is proved by the affidavit and the document at Exhibit ‘D’ annexed to the affidavit of evidence. The Plaintiff paid

premium of Rs.10/- per share to the third Defendant Company. The agreement dated 11th January, 1995 shows that in view of the assurance given by the second Defendant in the said letter/Agreement that two lakh shares of the third Defendant Company allotted to the Plaintiff will be purchased at the rate of 51/- per share, the Plaintiff invested the amount of Rs.40 lakhs. In the suit the prayer is for decree in the sum of Rs.1 crore two lakhs with interest thereon at the rate of 24% per annum. The liability of the first and second Defendants to pay sum of Rs.1 crore two lakhs has been established by the Plaintiff on the basis of the aforesaid affidavit and the documents. The Plaintiff has prayed for further interest at the rate of 24% per annum. Considering the facts and circumstances of the case, interest will have to be granted at the rate of 6% per annum.

7. Hence, there will be a decree in terms of prayer clauses (a) and (d) subject to modification that the further interest at the rate of 6 per cent per annum will be payable on the sum of Rs.01,02,00,000/- from the date of suit till realisation of payment. Costs will be payable by the 1st and 2nd Defendants.

8. The Plaintiff will be entitled to refund of court fees, if any, in accordance with rules. Certified copy is expedited.

JUDGE